

## Father Stan Swamy - Rights of Prisoners with Disabilities

### What is the issue?

- Father Stan Swamy, the 83-year-old activist (who suffers from Parkinson's disease), lodged in Mumbai's Taloja prison, was denied a sipper and straw.
- Denying a prisoner with disabilities his recognised rights is a legal wrong and a display of a lack of compassion.

### Who is Father Stan Swamy?

- Fr. Stan Lourduswamy S.J., is an Indian Roman Catholic priest and a tribals rights activist for several decades.
- The 83-year-old activist was arrested by the National Investigation Agency (NIA) in October 2020.
- He is alleged to have involved in the 2018 Bhima Koregaon violence.
- He is charged under the Unlawful Activities (Prevention) Act, 1967.

### What is the controversy over the sipper and straw?

- Father Swamy reportedly made an application to be provided with a sipper and straw as he was unable to hold a glass as he was suffering from Parkinson's disease.
- His request was inexplicably deferred for 20 days.
- The NIA later informed the court that it did not have a straw and sipper to give to him.
- The court has sought a report from the jail authorities on allowing Father Swamy to receive a straw and sipper at his own cost.
- However, subsequent reports said that Father Swamy had been provided with a sipper and straw by the jail authorities.
- Nevertheless, given Father Swamy's allegations, a fuller examination is merited by the court.

### Why is it significant?

- The above events demonstrate the insensitivity of legal procedure.
- Apart from this, it outlines another fundamental issue which is the **rights of prisoners with disabilities**.
- While confinement/imprisonment itself is not easy, it is significantly more difficult for persons with disabilities.

- The difficulties persons with disabilities face in society are exacerbated in prison, given the nature of overcrowded and underfunded prison environments.
- It is precisely for this reason that both international and domestic laws recognise and protect the rights of disabled prisoners.

### What are the laws in this regard?

- **UNCRPD** - Under international law, it is the UN Convention on the Rights of Persons with Disabilities (CRPD).
- It applies to all persons with disabilities including detainees and prisoners.
- It imposes a positive obligation on authorities, including prison staff, to ensure that prisoners with disabilities are -
  - i. on an equal basis with others
  - ii. entitled to guarantees in accordance with international human rights law
  - iii. treated in compliance with the objectives and principles of the convention, including by provision of reasonable accommodation
- The obligation encompasses the provision of auxiliary aids relevant to the disability.
- This is to secure the inherent dignity of the prisoner to enable them to live independently and participate in all aspects of their daily lives.
- In cases where such provision is not made by prison authorities, it may amount to a breach of a state's obligation.
- India is a signatory to this.
- **ICCPR** - The above obligations are complemented by the provision of Article 10 of the International Covenant on Civil and Political Rights (ICCPR).
- The Nelson Mandela Rules on the standard minimum rules for the treatment of prisoners was also approved by the UN through a resolution in 2015.

### What are the legal provisions in India?

- The constitutional guarantees to persons with disabilities are available under Articles 14 and 21.
- Apart from this is the specific Indian legislation, the Rights of Persons with Disabilities Act, 2016.
- This was enacted with the objective of giving effect to the CRPD.
- This also requires that persons with disabilities enjoy the right to equality, life with dignity and respect for integrity equally with others.
- The Act also enjoins the state to take necessary steps to protect persons with disabilities from being subjected to torture, cruel, inhuman or degrading treatment.
- It also provides for taking necessary steps to ensure reasonable

accommodation for persons with disabilities.

- The Act does not specifically provide for persons with disabilities who are incarcerated.
- However, given the object of the legislation to give effect to the CRPD, it would even encompass prisoners.
- Notably, the Act explicitly recognises Parkinson's disease as specified disability in its Schedule.

### **Why does Swamy's case need attention?**

- The denial of aids such as a sipper and straw to Father Swamy is arguably inconsistent with both domestic and international law.
- The injustice in his case is magnified by the fact that he still awaits trial.
- The fundamental tenet on which Indian criminal law operates is that an accused is presumed innocent until proven guilty.
- His guilt or innocence is ultimately a matter for the court to decide.
- But the denial of his rights by the justice system not only constitutes a legal wrong but also displays an absence of compassion.

**Source: The Hindu**

